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TURKEY: Why can't Armenians elect a Patriarch?

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The state has again blocked the long-delayed election of a new Armenian Apostolic Patriarch, arguing that such an election would be contrary to the community's traditions. Yet, freedom of religion or belief protects the right of religious communities to elect leaders in accordance with their traditions as they interpret them.

The state has, again, blocked the process for the election of a new Patriarch for Turkey's Armenian Apostolic community. The Istanbul Governorship intervened again in early February as the community appeared to be on the point of initiating the long-delayed election. In light of the interference, the Armenian Patriarchate's Clerical Council felt compelled to back down, annul its 2017 election of a Locum Tenens (temporary leader) and acknowledge the authority of the Patriarchal Vicar-General, Archbishop Aram Ateshian.

The Istanbul Governorship – a state institution under the Interior Ministry responsible for state administration in Istanbul province, where the Armenian Patriarchate is based – argued that the Armenian community cannot elect a new leader as the previous Patriarch – unable to fulfil his functions since 2008 because of illness – is still living (see below).

Despite Turkey's international human rights obligations protecting the right of religious communities to elect their leaders, it is "established practice" that the state interferes in how some religious communities elect their leaders, particularly the Armenian, Greek Orthodox and Jewish communities. The state also appoints the head of the Presidency of Religious Affairs which is the state institution providing Islamic religious services including the administration of mosques and teaching (see below).

The state blocking of the election of a new Patriarch leaves the Armenian Apostolic Church community – the largest Christian community in Turkey - facing uncertainties and controversy. Within the community many views have been expressed in the past 10 years about how to elect a new leader in accordance with the community's traditions. But state interference has been a crucial factor obstructing progress being made in electing a new Patriarch (see F18News 11 August 2010 http://www.forum18.org/archive.php?article_id=1477).

Momentum for new election blocked

Momentum to initiate patriarchal elections gained pace in 2017 within the Armenian community, despite state reluctance to give the "go ahead" since 2008. The state's response did not show cooperation and facilitation of the right of religious or belief communities to elect their own religious leaders. On the contrary, the state obstruction which followed illustrates well the challenges faced in this process.

The head of the Surp Pirgic Armenian Hospital Foundation – the largest Armenian community foundation - Bedros Sirinoglu raised the election issue, among other community matters, when he met President Recep Tayyip Erdogan in January 2017. The President responded that the state would tackle the issues of the elections of the Armenian Patriarch and of the boards of directors of non-Muslim community foundations. He said this would happen after the April 2017 referendum on wide-ranging changes to the Constitution to increase the President's powers.

Yet since the referendum, the state has taken no steps to resolve the problem either of electing a new Armenian Patriarch or the community foundations' boards of directors.

Non-Muslim community foundations are not religious communities but are associated with them (see F18News 6 October 2011 http://www.forum18.org/archive.php?article_id=1621).

While the authorities need to adopt a new regulation for non-Muslim community foundations to hold elections for their board members, legally this is not required for the election of the Armenian Patriarch. Therefore while on the one hand it is difficult to understand the need for President Erdogan's involvement in the process, on the other, the lack of legal certainty resulting from a lack of legal framework explains the Armenian Church's need to ensure state cooperation.

The crucial impetus was the resignation in February 2017 of Bishop Sahak Mashalyan as head of the Clerical Council. His resignation caused much reaction from the Armenian community pressing for the election. His subsequent withdrawal of his resignation led the Clerical Council the same month to declare the seat of the Patriarch vacant and start the election process by electing a Locum Tenens (Deghabah), who would oversee the election of a new Patriarch.

After the Clerical Council's decision to hold patriarchal elections, four prospective candidates for election were mentioned: Patriarchal Vicar-General Archbishop Aram Ateshian, Bishop Sahak Mashalyan, Archbishop Karekin Bekdjian (the spiritual leader of Germany's Armenian community), and Archbishop Sebouh Chouljian (spiritual leader of the Gugark region of Armenia). All four have Turkish citizenship, which is a prerequisite for being eligible to become the Armenian Patriarch of Istanbul.

On 15 March 2017, the election of the Locum Tenens (temporary leader, Deghabah, Turkish: Patrik Kaymakam, $\hat{A}\pm$) took place. The spiritual leader of Germany's Armenians Archbishop Bekdjian was elected at 15:00. Immediately following the announcement of the election results, Archbishop Ateshian shared with the press an official letter the Istanbul Governorship had sent that same day to the Patriarchate of Turkey's Armenians stating that "legally it is not possible to start the election process".

The letter, sent at 13:47 that day, states that "it is understood that there is a desire to de facto start the Patriarchal Election procedure". The letter said the election was not legally possible, claiming the process could cause splits in the community by giving way to restlessness, and that the Patriarchal Vicar-General is on duty. It added that the community knows full well the procedural principles and jurisprudence applicable to patriarchal elections. This letter obstructed the election process.

In spite of these developments, Archbishop Ateshian did not resign from his position as Patriarchal Vicar-General. This led the Clerical Council to remove him from his position on 28 June 2017, with 22 members in favour and 2 against this decision.

Since then, the Armenian community has repeatedly appealed both for dialogue with the state authorities and available judicial remedies to be able to hold elections.

In February 2018, the Election Steering Committee in charge of holding the elections for Patriarch filed a complaint against the Interior Ministry for failure to respond in time to its application to proceed with the election.

On 6 February 2018, the Istanbul Governorship wrote to the Armenian Patriarchate stating that, as Patriarch Mesrob Mutafyan is still alive, the conditions for the election of a new Patriarch have not materialised. The letter argued that health reasons do not justify considering the position of the patriarch vacant and that Archbishop Ateshian continues to hold his position as Patriarchal Vicar-General.

After sending the letter, the Istanbul Governorship invited the heads of the Armenian community foundations for a meeting on 7 February, where Interior Minister Süleyman Soyly met and "listened to them". At the meeting, a prominent lawyer in the Armenian community Sebu Aslangil outlined the legal objections to the Governorship letter, the local Armenian weekly newspaper "Agos" reported the following day.

Aslangil reiterated that the state's decision not to allow the Armenian community to proceed with elections amounted to compelling the Clerical Council to elect someone whom they had already removed (a reference to Ateshian). He added that the letter's reference to the "so-called locum tenens" (Archbishop Bekdjian) was not an appropriate way to refer to a person elected by the Clerical Council.

Interior Minister Soyly replied that the state has a responsibility to uphold the law and accordingly to protect the Patriarchal Vicar-General, "Agos" added. However, Soyly said he was aware of the problems and will take them into account. It was agreed to meet again in a month.

After receiving the Istanbul Governorship's letter, Bishop Mashalyan convened the Clerical Council on 9 February, with Archbishop Ateshian presiding.

"The election of a patriarch is initiated and concluded with acting together with the state, this fact has always been evident in Patriarchal history," declared the Clerical Council's statement issued after the meeting. "Therefore the official letter is taken into account in this context. Since the state's will is that the conditions for the 85th patriarchal elections have not materialised, it is stated in the letter that the election of a Locum Tenens has no basis. Therefore the decision to retire Patriarch Mesrob II and declare his seat vacant does not comply with the rules."

Notably, the Clerical Council also remarks that when the conditions are conducive the necessity of a new Patriarch Election remains.

Archbishop Bekdjian did not participate in the meeting due to his expressed intention to resign from the Locum Tenens position. In his farewell message, published on 13 February, he stated that even though the state's obstruction appears to target him, in reality it aims to "sabotage the 85th Patriarchal Election and is the product of a long and planned campaign".

Why was patriarchal vicar elected in 2010?

Patriarch Mesrob Mutafyan became unable to carry out his duties for health reasons in July 2008 and is still incapacitated. He was elected against the wishes of Turkey's government and became incapacitated under much pressure from the government, media and the public, as well as the Armenian diaspora (see F18News 21 October 2008 http://www.forum18.org/Archive.php?article_id=1206).

It is believed that according to Armenian Apostolic Church tradition, a Patriarch must either die or resign from his position before the election of a successor can be held. For two years following 2008, discussions took place within the community on whether elections would be held or not. Two competing views emerged: one wanting to elect a new Patriarch and the other a Co-Patriarch.

However, in 2010 with a decision of the Istanbul Governorship Archbishop Ateshian became Patriarchal Vicar-General, a post the state invented as opposed to the election of a Co-Patriarch which, the state argued was not found in the Armenian tradition (see F18News 11 August 2010 http://www.forum18.org/archive.php?article_id=1477).

In October 2016, the Clerical Council decided to retire Patriarch Mesrob on the grounds that he had been unable to perform his duty for 7 years. The election process for a new Patriarch was initiated following this decision.

Impact on the community

The inability to elect a Patriarch has harmed Turkey's Armenian community in many ways. "Not having a head [leader] for ten years deepens existing problems, leads our people to hopelessness and our youth to a search for new horizons," Bishop Mashalyan, whose resignation as head of the Clerical Council in 2017 played an important role in triggering the new election process, told Forum 18 in February 2018. "On top of this, the election atmosphere - always on the agenda, but never resolved - provides the ground for church divisions and conflict."

Bishop Mashalyan added that although the Church is able to continue its routine work, making decisions on issues "important for our community" and developing new projects are impossible. "The representation of our Patriarchate weakens and crucial contact with the state cannot be made," he told Forum 18. "The uncertainty of these extraordinary circumstances can no longer be tolerated."

Is state permission needed to elect Patriarch?

Views differ on whether the state needs to give permission for the community to proceed with the election of the Patriarch. During the Ottoman Empire, the 1863 Armenian Nation [Millet] Regulation formed the legal basis for the election of a new Patriarch. Whether this Regulation applies in the modern Turkish Republic is far from clear.

The Regulation enshrines extensive rules on the internal management of the Armenian community, including the election of a new Patriarch. The non-religious autonomous administrative organs that are referred to in the Regulation were, however, annulled during the Republic. Hence, whether and to what extent the Regulation is legally binding remains unclear.

On the other hand, practice in the Turkish Republic demonstrates that the state has interfered in every election process. Throughout the Republic, five elections for a new Armenian Patriarch have taken place. Each time the state authorities have interfered regarding the timing of the election or the election rules.

Views also differ within the Armenian community, it appears. Archbishop Ateshian argues that in order to proceed with the election, the first step is to obtain permission from the state. According to Bishop Mashalyan, such permission is not needed, and notifying the state and obtaining a date for the election is enough.

Bishop Mashalyan sees the lack of legal personality and the lack of a legal framework that regards the Armenian community as a collective whole as the main obstacles. For example, without legal personality judicial applications become meaningless. He considers, "the good will of Ankara" as "the only contingent". He maintains hope saying, "the state's reply is delayed, but there is no refusal".

As on previous occasions, according to Bishop Mashalyan, the election is to be held in accordance with the Ordinance and date given by the Interior Ministry with the signature of the Cabinet approving the application by the elected Deghabah (Locum Tenens) and the Election Steering Committee.

Another way of moving forward might be the resignation of Archbishop Ateshian as Patriarchal Vicar-General. However, in a lengthy public statement published on Facebook on 3 January 2017, he reiterated that the state does not recognise the Locum Tenens. "Since the Locum Tenens is not officially recognised, isn't it better that someone [himself] who is recognised is in this position?" he asked.

If and when the Locum Tenens were to be approved by the state, Archbishop Ateshian promised to leave his position. Since the

Governorship's letter does not recognise the election of the Locum Tenens, Archbishop Ateshian believed that he should remain in his position as Patriarchal Vicar-General.

According to the "Agos" newspaper, his statement signalled that Ateshian regards the dynamics of bureaucratic relationships as more important than the will of the General Assembly of Clergy and the people's demands. It appears that this approach has prevailed at this time.

No uniform legal framework for election of religious leaders

No uniform legal framework applies to the election of religious leaders in Turkey, which leaves some communities vulnerable. The state interferes the most in the elections for leaders of the non-Muslim communities as viewed by the state as being protected under the 1923 Lausanne Treaty (Armenians, Jews and Greeks and to some extent and more recently Syrians).

The Prime Minister appoints the head of the Presidency of Religious Affairs (Diyanet), a government agency which is the largest provider of Sunni Islamic religious services (see F18News 4 May 2011 http://www.forum18.org/archive.php?article_id=1567).

The state has not interfered in the selection of leaders of other religious communities - including Alevi Muslims, Protestants, and the Baha'is. But their leaders do not enjoy state recognition (see F18News 11 August 2010 http://www.forum18.org/archive.php?article_id=1477).

In contrast to the state obstruction of the election of the Armenian Patriarch, Turkey's Jews re-elected their Rabbi Rav Ishak Haleva on 14 May 2017. Yet even this process, which from the outside appeared to run smoothly, still included state involvement.

The Jewish community previously changed its rules about electing the Chief Rabbi, requiring election every seven years. When the seven-year term came to an end, the community applied to the Istanbul Governorship on 4 April 2017. The Election Steering Committee met and announced the election rules on 28 April. Accordingly, candidates could announce their candidacy by 5 May. In the absence of any other candidates, Rav Ishak Haleva, who has been the Chief Rabbi of Turkey's Jews since 2002, was elected again.

Interference incompatible with international human rights law

The situation of the Armenian community illustrates clearly the vulnerability of religious communities. First, the lack of an effective legal framework enforces dependency on political will, which can often change. Such an arrangement is not compatible with the norms enshrined in the European Convention on Human Rights.

Since in Turkey no religious or belief community has legal personality as such, religious or belief communities cannot form legal entities with their internal governing processes. As a result, they are dependent on the approval of the state authorities. The right to acquire legal personality is indispensable for numerous aspects of the exercise of freedom of religion or belief in its collective dimension.

In a case originally launched by Hungary's Mennonite Church, the European Court of Human Rights (ECtHR) held in April 2014 that "there is a positive obligation incumbent on the State to put in place a system of recognition which facilitates the acquisition of legal personality by religious communities" (Application No. 70945/11 et al, <http://hudoc.echr.coe.int/eng?i=001-142196>).

Similarly, the then United Nations (UN) Special Rapporteur on Freedom of Religion or Belief, Heiner Bielefeldt, drew attention to legal obligations flowing from the provisions protecting freedom of religion or belief. "Such an administrative decision [on legal personality] should not be misconceived as an act of mercy, however," he noted in his December 2011 report (A/HRC/19/60, <http://undocs.org/A/HRC/19/60>).

"Under international law, States are obliged to take an active role in facilitating the full enjoyment of human rights, including freedom of religion or belief," Bielefeldt noted. "By not providing appropriate legal options that, de jure and de facto, are accessible to all religious or belief groups interested in obtaining a legal personality status, States would fail to honour their obligations under the human right to freedom of religion or belief."

Secondly, the right of religious or belief communities to choose or elect their leaders and teachers is an integral part of the right to freedom of religion or belief in its collective dimension, as noted in General Comment 22 of the UN Human Rights Committee. If states take steps to interfere in this right, it is the obligation of the state to demonstrate, among others, that this restriction is prescribed by law, pursues a legitimate aim to protect public safety, order, health or morals, or the fundamental rights and freedoms of others and is proportionate to the aim pursued.

It is hard to see that the steps taken by Turkish state authorities in the case of the election of the Armenian Patriarch could pass a rigorous scrutiny of the restrictions test.

Thirdly, if and when differing views exist within a religious or belief community on, for example, when and how elections of their leaders should be carried out, it is not the role of the state to impose a certain way. On the contrary, the ECtHR holds that "the internal structure of a religious organization and the regulations governing its membership must be seen as a means by which such organizations are able to express their beliefs and maintain their religious traditions" (Hasan and Chaush v. Bulgaria, 30 October 2000, Application No. 30985/96, <http://hudoc.echr.coe.int/eng?i=001-58921>).

In light of this, the role of the Turkish authorities should be to respect the will of the Armenian Apostolic community and cooperate with it to ensure that the elections run smoothly. This would provide conditions conducive for the internal mechanisms of the community to manage tensions and conflicts without state interference.

In addition, the Turkish authorities need to ensure that the collective dimension of freedom of religion or belief is effectively protected, including by creating a legal framework for religious communities to acquire legal personality and ensuring that non-Muslim community foundations can elect their board members. (END)

For more background, see Forum 18's Turkey religious freedom survey http://www.forum18.org/archive.php?article_id=1916, and the Norwegian Helsinki Committee: Turkey Freedom of Belief Initiative (NHC:IÖG) <http://www.inancozgurlugugirisimi.org>.

More analyses and commentaries on freedom of thought, conscience and belief in Turkey can be found at <http://www.forum18.org/Archive.php?query=&religion=all&country=68>.

A compilation of Organisation for Security and Co-operation in Europe (OSCE) freedom of religion or belief commitments can be found at http://www.forum18.org/Archive.php?article_id=1351.

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